



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

**DATE:** March 8, 2013

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary  
David Meany, Chief Legal Counsel

*Ben Brancel*  
*David V. Meany*

**SUBJECT:** Chs. ATCP 17, 21, 53, 60, 70, 80 and 88 – Minor and Technical Changes to Multiple Department Chapters; Scope Statement

**TO BE PRESENTED BY:** David Meany

**REQUESTED ACTION:**

At the March 22, 2013, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for proposed amendments to current DATCP rule chs. ATCP 17, 21, 53, 60, 70, 80 and 88 related to Livestock Premises Registration, Plant Inspection and Pest Control, Agricultural Enterprise Areas, Dairy Farmers, Food Processing Plants, Dairy Plants and Egg Grading, Handling and Labeling. The proposed rule will make technical changes (non-substantive or minor substantive changes) to a number of administrative code chapters administered by DATCP.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s. 227.135 (2), Stats.), the Governor approved this scope statement for permanent rule changes on February 19, 2013, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the March 1, 2013, issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

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If the Board approves the scope statement, DATCP will begin work to draft the permanent rule. Approval of the scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process, and adopted by the Secretary.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Chs. ATCP 17, 21, 53, 60, 70, 80 and 88

Relating to: Livestock Premises Registration, Plant Inspection and Pest Control, Agricultural Enterprise Areas, Dairy Farms, Food Processing Plants, Dairy Plants and Egg Grading, Handling and Labeling.

Rule Type: Permanent

**1. Finding/nature of emergency (Emergency Rule only): N/A**

**2. Detailed description of the objective of the proposed rule:**

This proposed rule will make technical changes (Non-substantive or minor substantive changes) to a number of administrative code chapters administered by DATCP. This rule may make the following technical changes to current rules:

- Update technical standards incorporated by reference in current rules (new editions of technical references cited in current rules).
- Correct erroneous and obsolete citations and cross-references.
- Correct typographical errors.
- Make non-substantive organizational and drafting changes.
- Make other minor changes to current rules to incorporate new statutory language.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

### **93.07 Department duties.**

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

(12) PLANT PESTS. To conduct surveys and inspections for the detection and control of pests injurious to plants, make, modify, and enforce reasonable rules needed to prevent the dissemination of pests, declare and manage emergencies relating to the detection and control of pests injurious to plants, provided that such declaration does not supersede the authority of the chief state forester under s. 23.114 or the department of natural resources under s. 26.30, and suggest methods of control.

**(24) ENFORCEMENT OF LAWS.** To enforce chs. 88 and 93 to 100 and all other laws entrusted to its administration, and especially:

**(a)** To enforce the laws regarding the production, manufacture and sale, offering or exposing for sale or having in possession with intent to sell, of any dairy, food or drug product.

**(b)** To enforce the laws regarding the adulteration or misbranding of any articles of food, drink, condiment or drug.

**(c)** To inspect any milk, butter, cheese, lard, syrup, coffee, tea or other article of food, drink, condiment or drug made or offered for sale within this state which it may suspect or have reason to believe to be impure, unhealthful, misbranded, adulterated or counterfeit, or in any way unlawful.

**(d)** To prosecute or cause to be prosecuted any person engaged in the manufacture or sale, offering or exposing for sale or having in possession with intent to sell, of any adulterated dairy product or of any adulterated, misbranded, counterfeit, or otherwise unlawful article or articles of food, drink, condiment or drug.

**95.51 Livestock Premises Registration (7) RULES.** The department may promulgate rules for the administration of this section. The department shall promulgate rules to govern the release of aggregate information under this section by the department.

**97.09 Rules. (4)** The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

**97.20 Dairy Plants. (4) RULE MAKING.** The department may promulgate rules to establish amounts of fees required under subs. (2c) to (2w) or to govern the operation of dairy plants. The rules may include standards for the safety, wholesomeness and quality of dairy products; the construction, maintenance and sanitary operation of dairy plants; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; pasteurization and processing procedures; sampling and testing; and reports and record keeping. The rules may also set forth the duties of dairy plants to inspect dairy farms, collect and test producer milk samples and make reports to the department.

**97.22 Milk producers. (8) RULE MAKING.** The department may promulgate rules to establish the fees required under sub. (2) (b) or (4) (a) or to govern the operation of dairy farms by milk producers. The rules may include standards for any of the following:

**(a)** The safety, wholesomeness and quality of milk.

**(b)** The sanitary construction and maintenance of dairy farm facilities used in milk production.

**(c)** The availability of safe and adequate water supplies for milk production.

**(d)** The sanitary construction, maintenance and cleaning of equipment and utensils used in milk production.

**(e)** Personnel sanitation related to milk production.

(f) Sanitary procedures for the production of milk, including but not limited to the handling, transfer and storage of milk on a dairy farm.

**97.29 Food Processing Plants (5) RULE MAKING.** The department may promulgate rules to establish the fees required under sub. (3) (a) or (c) or to govern the operation of food processing plants. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling and storage; sanitary production and processing; and food sources and food labeling.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The department estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. The department will use existing staff to develop this rule.

**6. List with description of all entities that may be affected by the proposed rule:**

The proposed technical changes to current rules will not have any impact on persons covered by those rules. There will be no adverse impact on business or local government.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

Not applicable.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

None.

**Contact Person:** Karen Schultz, Executive Staff Assistant, (608) 224-5023.



Department Head or Authorized Signature



Date Submitted